

1993

# State of Utah v. Joseph C. Valdez : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Attorney General, State of Utah.

Elliott Levine; Attorney for Appellant.

---

## Recommended Citation

Brief of Appellant, *Utah v. Joseph C. Valdez*, No. 930114 (Utah Court of Appeals, 1993).  
[https://digitalcommons.law.byu.edu/byu\\_ca1/3985](https://digitalcommons.law.byu.edu/byu_ca1/3985)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

## 17500

50

A.0

DOCKET NO.

IN THE UTAH COURT OF APPEALS

)

)

)

;

1

;

)

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT, SUMMIT COUNTY

THE HONORABLE FRANK G. NOEL, PRESIDING

ELLIOTT LEVINE, Attorney  
SUMMIT COUNTY PUBLIC  
DEFENDER, ATTORNEY  
FOR APPELLANT/DEFENDANT  
P.O.B. 526116  
SALT LAKE CITY, UT 84152-  
6116

**FILED**

JUL 26 1993

# COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

---

STATE OF UTAH,	)	
	)	
Plaintiff/Appellee,	)	
	)	
VS.	)	
	)	CASE NO. 930114-CA
JOSEPH C. VALDEZ,	)	PRIORITY NO. 2
	)	
Defendant/Appellant.	)	

---

APPELLANT'S BRIEF

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT, SUMMIT COUNTY  
THE HONORABLE FRANK G. NOEL, PRESIDING

---

ATTORNEY GENERAL,  
STATE OF UTAH  
ATTORNEY FOR APPELLEE/  
PLAINTIFF  
236 STATE CAPITOL  
SALT LAKE CITY, UT 84114

ELLIOTT LEVINE, Attorney  
SUMMIT COUNTY PUBLIC  
DEFENDER, ATTORNEY  
FOR APPELLANT/DEFENDANT  
P.O.B. 526116  
SALT LAKE CITY, UT 84152-  
6116

## TABLE OF CONTENTS

	PAGE
JURISDICTION.....	1
STATEMENT OF ISSUES PRESENTED ON APPEAL.....	1, 2
STATEMENT OF THE CASE.....	2, 3, 4
SUMMARY OF ARGUMENT.....	4
ARGUMENTS.....	4-6
POINT I.    THE EVIDENCE PRESENTED AT TRIAL AS TO THE TAMPERING WITH EVIDENCE CHARGE WAS INSUFFICIENT IN THAT REASONABLE MINDS COULD NOT HAVE CONCLUDED THAT THE APPELLANT HAD THE REQUISITE MENTAL STATE.....	4
CONCLUSION.....	6
MAILING CERTIFICATE.....	7

## TABLE OF AUTHORITIES

### STATUTES CITED:

### PAGE

Utah Code Annotated, section 41-6-44.....	2
Utah Code Annotated, section 41-6-44.20.....	2
Utah Code Annotated, section 41-6-136.....	2
Utah Code Annotated, section 41-1a-1305.....	2
Utah Code Annotated, section 76-8-510.....	2
Utah Code Annotated, section 78-2a-3(2)(f).....	1

### CASES CITED:

State v. Cantu, 750 P.2d 591, 593 (Utah 1988).....	4
State v. Harman, 767 P.2d 567 (Utah App. 1989).....	5,6
State v. Petree, 659 P.2d 443, 444 (Utah 1983).....	4

IN THE UTAH COURT OF APPEALS

---

STATE OF UTAH,	)	
	)	
Plaintiff/Appellee,	)	
	)	
VS.	)	
	)	CASE NO. 930114-CA
JOSEPH C. VALDEZ,	)	PRIORITY NO. 2
	)	
Defendant/Appellant.	)	

---

APPELLANT'S BRIEF

JURISDICTION OF THE COURT

The Jurisdiction of the Utah Court of Appeals is conferred pursuant to U.C.A., section 78-2a-3(2)(f).

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

The Appellant assigns the following errors, on the part of the trial court, and issues as grounds for his appeal in this case:

A. As to the charge of tampering with evidence, the evidence presented by the State was insufficient to establish the required mental state.

i. Standard of Review: The Court may review the verdict of a jury in a criminal case and reverse as a matter of law if it is found that the evidence is insufficient.

ii. Supporting Authority: **State v. Cantu**, 750 P.2d 591, 593 (Utah 1988); **State v. Petree**, 659 P.2d 443, 444 (Utah 1983)

#### STATEMENT OF THE CASE

This is an appeal from the appellant's Jury Trial conviction in the Third District Court, summit county pursuant to a five (5) count Information (R.2-5) alleging: 1) Tampering with Evidence, a violation of U.C.A., section 76-8-510, a 2nd degree felony; 2) Driving a Motor Vehicle while under the influence of alcohol, a violation of U.C.A., section 41-6-44, a class B misdemeanor; 3) Driving a Motor Vehicle while License was Suspended, a violation of U.C.A., section 41-6-136, a class B misdemeanor; 4) Open Container of Alcohol in a Vehicle, a violation of U.C.A., section 41-6-44.20, a class C misdemeanor, and; 5) Use of a License Plate Registered to another Vehicle, a violation of U.C.A., section 41-1a-1305, a class C misdemeanor. Count III, Driving a Motor Vehicle while License was Suspended, a violation of U.C.A., section 41-6-136, a class B misdemeanor, was dismissed by the Circuit Court Judge at the Defendant's preliminary hearing. Appellant was bound over to stand trial on the remaining four (4) Counts. After a trial by jury, the Appellant was convicted on Counts I, II, IV, and V. This is an appeal from the Appellant's conviction on Count I only, Tampering with Evidence, a violation of U.C.A., section 76-8-510, a 2nd degree felony.

On or about August 16, 1992 Appellant was arrested in Summit County, Utah for Driving a Motor Vehicle while under the Influence of Alcohol (R.134, l. 6-7) , Driving a Motor Vehicle while License was Suspended, Open Container of Alcohol in a Vehicle, and Use of a License Plate Registered to another Vehicle. Appellant was transported to the Summit County Jail (R. 139, l. 1-4) given an intoxilyzer test and booked. After the administration of the intoxilyzer test by the Utah Highway Patrol Trooper, the Trooper placed the Intoxilyzer test records (the intoxilyzer printout and intoxilyzer checklist, R.10) on the table (R.150, l. 13-19) at which he and Appellant were seated (R.142, l. 2-17) and proceeded to fill out the DUI Report by asking the Appellant questions. At some point in time Appellant asked to go to the restroom and was escorted to the restroom by the Summit County Jailer while the UHP Trooper remained at the table filling out the required DUI paperwork. Appellant returned to the table and the UHP Trooper's questioning resumed . After 5 or 6 minutes the Appellant asked to go to the restroom again (R.151, l. 12 to R.152, l. 5). Once again, the Summit County Jailer escorted the Appellant to the restroom (R.189, l. 25 to R.190, l. 21). While the Appellant was relieving himself, the jailer noticed a piece of paper fall into the toilet as Appellant was flushing. The jailer reached into the toilet and retrieved the wet, crumpled Intoxilyzer test record and Intoxilyzer Checklist from Appellant's recently administered intoxilyzer test. (R.190, l. 11 to R.191, l. 13) The Intoxilyzer test record



and Intoxilyzer Checklist was wet but still usable. Appellant was charged with Tampering with Evidence, a violation of U.C.A., section 76-8-510, a 2nd degree felony. The Intoxilyzer test record and Intoxilyzer Checklist, which were retrieved from the toilet, were dried out and later admitted into evidence at the Appellant's trial.

#### SUMMARY OF ARGUMENTS

A. The evidence presented at trial was insufficient to establish the required mental state.

#### ARGUMENTS

##### POINT I

THE EVIDENCE PRESENTED AT TRIAL AS TO THE TAMPERING WITH EVIDENCE CHARGE WAS INSUFFICIENT IN THAT REASONABLE MINDS COULD NOT HAVE CONCLUDED THAT THE APPELLANT HAD THE REQUISITE MENTAL STATE.

This Court may review the verdict of a jury in a criminal case and reverse as a matter of law if it is found that the evidence is insufficient. *State v. Cantu*, 750 P.2d 591, 593 (Utah 1988); *State v. Petree*, 659 P.2d 443, 444 (Utah 1983)

It is clear from the trial record that throughout the booking process and DUI interview:

-The Appellant was cooperative. (R.158, l. 6-11)

- The Appellant indicated to the officer that he was guilty of DUI and was going to plead guilty to DUI. (R.158, l. 13-25; R.22-27).

-The Appellant voluntarily gave a recorded statement to the UHP Trooper. (R.22-27).

-Appellant, when confronted by the Trooper's allegations that he attempted to destroy evidence, denied such and stated that he did not know what the papers were. (R.22-27)

- Appellant continually contended that the Intoxilyzer test record and checklist were mixed in with papers which were given to him. (R.22-27)

Even at trial, Appellant unswayingly stuck to his story and contended that he did not know what the papers were, that he was not trying to destroy any evidence, that he knew of no evidence since he had admitted his guilt. (R.200, l.7 to R.222, l. 24)

It became critical, under these circumstances, for the State to show that Appellant's actions were improper. The state failed to do this. "Culpability can be implied from the actions and statements of the defendant, but the evidence must be clear enough that the jury does not have to guess." *State v. Harman*, 767 P.2d 567 (Utah App. 1989)

Appellant contends that the evidence was so slight, so conflicting, and so inherently improbable that reasonable minds could not have concluded that Appellant willfully, and with the requisite state of mind, flushed the papers down the toilet in an attempt to alter, destroy, conceal or remove it to impair its

verity or availability, rather than because the papers were not needed by the Appellant because he had already admitted his guilt. (Harman, Supra at pg. 569)

Appellant contends that the present case is akin to the type of situation addressed by this Court in the Harman case, to wit: that the evidence was insufficient to establish the required mental state, and that the Harman case is controlling as to this appeal.

#### CONCLUSION

For the foregoing grounds, and based upon the foregoing arguments, it appears that the evidence elicited at trial was insufficient to establish the required mental state as to the Tampering with Evidence Charge.

As such, Appellant requests that this Court:

1. Reverse the Appellant's conviction as to the charge of Tampering with Evidence, a 2nd Degree Felony;
2. Grant such other and further relief as this court deems appropriate.

Dated this 16th day of July, 1993.

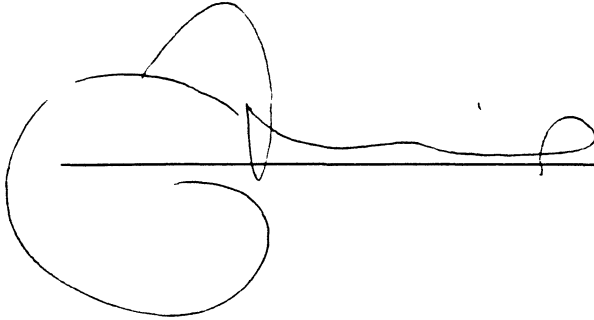
Respectfully Submitted,

  
ELLIOTT LEVINE, Attorney for  
Appellant

CERTIFICATE OF MAILING

The undersigned certifies that they mailed four (4) true and correct copies of the foregoing brief, postage prepaid, on this 16th day of July, 1993, to:

ATTORNEY GENERAL, STATE OF UTAH  
APPELLATE DIVISION  
236 STATE CAPITOL  
SALT LAKE CITY, UT 84114

A handwritten signature in black ink, featuring a large, stylized initial 'G' followed by a horizontal line and a small flourish at the end.

## **ADDENDUM**

**76-8-510. Tampering with evidence.**

A person commits a felony of the second degree if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(1) Alters, destroys, conceals, or removes anything with a purpose to impair its verity or availability in the proceeding or investigation; or

(2) Makes, presents, or uses anything which he knows to be false with a purpose to deceive a public servant who is or may be engaged in a proceeding or investigation.

1973